

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
AT OMAHA, NEBRASKA

GUILLERMO HERRERA, III,)	
)	
Plaintiff,)	Case No.: 8:15-cv-426-JMG-CRZ
)	
vs.)	VIDEO
)	DEPOSITION OF:
UNION PACIFIC RAILROAD COMPANY,)	
a Delaware Corporation,)	BRADEN BRADLEY
)	
Defendant.)	

Taken at the Buffalo County
Courthouse Conference Room
1512 Central Avenue
Kearney, Nebraska 68847
September 30, 2016,
Commencing at 8:35 a.m.
Concluding at 9:10 a.m.

A P P E A R A N C E S

For the Plaintiff:	Mr. James L. Cox, Jr. Attorney At Law 3801 E. Florida Avenue, #905 Denver, Colorado 80210-2500
For the Defendant:	Mr. David J. Schmitt Attorney At Law 10306 Regency Parkway Drive Omaha, Nebraska 68114
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S T I P U L A T I O N S

18 It is hereby stipulated and agreed by and between the
 19 parties that:
 20 Notice of taking said deposition is waived; notice of
 21 delivery of said deposition is waived.
 22 Presence of the witness during the transcription of the
 23 stenotype notes is waived.
 24 Taken according to the Nebraska Discovery Rules.
 25

1 (Exhibit No. 44 was marked for
 2 identification.)

3 BRADEN BRADLEY,

4 having been first duly sworn to
 5 tell the truth, the whole truth,
 6 and nothing but the truth,
 7 testified as follows:

D I R E C T E X A M I N A T I O N

8 BY MR. COX:

9 Q Good morning, sir.

10 A Morning.

11 Q Would you give me your full name, please, sir.

12 A Braden Harold Bradley.

13 Q And, Mr. Bradley, where do you live?

14 A Holdrege, Nebraska.

15 Q Would you mind giving us an address in case we had to
 16 contact you?

17 A , Holdrege, Nebraska, 68949.

18 Q Thank you. How old are you?

19 A Forty-eight.

20 Q Who do you work for now?

21 A Union Pacific.

22 Q And on what gang are you working?

23 A 8501.

24 Q Is gang 8501 the same gang that you were working on in
 25 July of '15?

A Yes.

1 Q Tell us a little bit about yourself. Where were you
 2 born? Where were you raised?

3 A I was born in Holdrege. Pretty much raised there 'til
 4 I was -- ninth grade. And my parents moved around a lot. And
 5 then I ended up graduating high school from Holdrege so...

6 Q Okay. And give us some idea -- I don't need specifics,
 7 but when did you go to work for the Union Pacific Railroad?

8 A March of '15.

9 Q Give me some idea of what work you had done from high
 10 school to going to work for the U.P.

11 A I worked for farmers, fixing their tractors and their
 12 planters, and then moved to Omaha. Went to school down in
 13 Daytona Beach for motorcycles. Worked at Harley-Davidson Omaha
 14 for four years, and then I went to work for Freightliner for
 15 about three years. And then I went to work for a company that I
 16 helped out. It was a media recovery. Did that. Kind of
 17 serviced their vehicles and was a manager. And got laid off in
 18 '08. And worked for Paulson Schmidt. Drove a mud truck and
 19 serviced their equipment. And I worked for Cash-Wa here in
 20 Kearney for about three years and basically was their heavy
 21 mechanic. I did all their engine work, transmission work,
 22 rear-end work. And got a job with Union Pacific after that.

23 Q So, sounds to me like pretty much mechanical work all
 24 of your career?

25 A Yes.

1 Q All right. What is your job now on the U.P.?

2 A I work on the equipment that fixes the track on the
 3 steel gang.

4 Q And we all know by now, but a "steel gang," we
 5 understand, is a gang that works predominantly with railroad
 6 rails to lay or replace rails on tracks?

7 A Right.

8 Q And are you a mechanic assigned to that gang?

9 A Yes, I am.

10 Q And give us some idea how many machines are there on
 11 that gang when it's in full strength and how many mechanics are
 12 there?

13 A There's about 20 machines and there's six mechanics.

14 Q And you've been on gang 8501 since starting on the
 15 railroad --

16 A Yes.

17 Q -- in March of '15?

18 A Yes.

19 Q Thank you. Let's move to July 26th, 2015. We all
 20 understand that's the date that Guillermo Herrera suffered the
 21 heat injury that's the subject of our -- our claim here. Tell us
 22 generally what you can remember about what the gang was doing,
 23 where it was working. Just -- do you have a memory of that?

24 A We were working by Onaga, Kansas, and it was just hot
 25 and just -- just a normal day, I guess. Just everybody's doing

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1 their thing on the railroad, trying to -- trying to get it
2 done.

3 Q Okay. We -- a man who works with me, Sean Dillon,
4 contacted you a couple of weeks ago on the phone and asked you to
5 give him a statement of what you could recall about that day. Do
6 you remember doing that?

7 A Yes.

8 Q Can you tell us a little bit about how that occurred?
9 What you and Mr. Dillon's conversation was. How -- how we ended
10 up with this statement.

11 A He just called and asked me if I remember that day that
12 Guillermo dropped out, and I said, yeah. I mean, it's a year
13 ago. I'll try to remember what I could. And he -- we just
14 talked about it, and that's the statement he come up -- come up
15 with right here.

16 Q And did you give him this information and then he typed
17 it up and sent it to you to review?

18 A Yes.

19 Q And did you -- did you have an opportunity to make any
20 changes or anything like that before signing it?

21 A Yes.

22 Q And have you had a chance to review that? I'm
23 referring to what we've marked as Exhibit 44. Is that the -- do
24 you recognize that as the statement that you -- typed-up version
25 of the statement that you gave to Mr. Dillon?

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1 A Yes, it is.

2 Q And is that your signature?

3 A Yes, it is.

4 Q All right. With your permission, I'll go through this
5 with you a little bit as -- as we go through some of my
6 questions. You tell us -- tell us about moving from California,
7 where you had worked last, to Onaga and the difference in the
8 weather from California, where you all had been working. And
9 then we understand you have, what, seven days off?

10 A Uh-huh. Yes.

11 Q And then gang moved to Onaga, Kansas? Am I
12 understanding that right?

13 A I believe we moved -- trying to think how we went. I
14 believe we moved into Nebraska over by North Platte. Can't think
15 of the name. Starts with a G. It's not...

16 Q Maybe Gibbon?

17 A Gibbon's over by Kearney. It's...

18 Q Gothenburg?

19 A Gothenburg.

20 Q I wasn't ready for a geography pop quiz but... Okay.
21 And then when you got to Onaga -- when was it that you got to the
22 Onaga area, if you remember?

23 A August. We got over there by Gothenburg in July. It
24 was the end of July. So, it was the end of August, around there.
25 August. Sometime in August.

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1 Q Now, we understand that the gang was working near Onaga
2 on July 26th, when Guillermo had his heat injury?

3 A Yeah. Yeah, I'm trying to remember all -- where we
4 were.

5 Q Really I don't -- I don't expect you to remember that
6 perfectly. What was the weather like when you all were in Onaga
7 on July 26th?

8 A It was very hot and humid. It was -- I would say
9 mid -- I would say mid-90s with the -- probably 80, 90 percent
10 humidity.

11 Q How did it affect you? Now, I understand that you have
12 a mechanic's truck that you work out of to give you the ability
13 to drive up and down where the gang is?

14 A Uh-huh.

15 Q Is that right?

16 A Yes.

17 Q When you were working outside of that truck, how did
18 the temperature affect you?

19 A As soon as you get out, you start sweating. You're
20 just instantly wet because it's just hot and humid and -- I mean,
21 your shirt gets soaked, but it's not cooling. It's just a wet
22 shirt. And you just drink lots of water and try to find shade
23 when you can.

24 Q Tell us what you remember about Guillermo Herrera on
25 July 26th. Had you seen him or talked with him or worked with

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1 him earlier in the day?

2 A I might have seen him at job briefing because, you
3 know, everybody's around. You say hi and you walk around,
4 get -- you know, get your water or your fruit, and then they go
5 off and do their own thing. We go off and do our mechanic's
6 meeting so...

7 Q When did you first have any contact with Guillermo on
8 July 26th? Mr. Herrera.

9 A It would have been when he went and got in my truck.

10 Q Tell us about that.

11 A And Scott come up and asked if he could get in the
12 truck.

13 Q And who is Scott?

14 A Scott, he's the -- like the area supervisor.

15 Q Okay. We know a Scott Nicholson who's the assistant
16 foreman.

17 A Yeah. Assistant foreman, yeah.

18 Q Okay.

19 A And basically every little group has a foreman. And so
20 that way they can like clear trains. Or if somebody gets hurt,
21 somebody's responsible. He came up and asked if he could get in
22 the truck, and I said, yeah, it's running. A.C.'s on. You can
23 stay as long as he needs to.

24 Q Okay. And what did -- did Mr. Herrera then come into
25 your truck?

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1 A Yes. He went and got in the truck. And there was
 2 water inside the truck so... And I was still up on top of the
 3 machine working so...
 4 Q What did he look like or how did he appear to you when
 5 he got into the truck?
 6 A He looked a little -- like a little run down. Like,
 7 you know, the heat was -- like just a little slow. Like, you
 8 know what, been out in the heat all day. You're just not real
 9 peppy. Just like alright. A little lethargic, I guess. A
 10 little...
 11 Q And do you have a memory of about when it was that he
 12 got into your truck?
 13 A I'm thinking about 2 o'clock-ish. I know it was the
 14 hottest part of the day.
 15 Q Okay. Do you know how long he was in your truck?
 16 A I'd say about 45 to 50 minutes.
 17 Q Were you in the truck with him at any time?
 18 A Yes. About -- I got in there -- I was in the truck
 19 about ten minutes.
 20 Q And why were you in the truck?
 21 A To cool off and drink some water.
 22 Q And how did Mr. Herrera appear to you when you were in
 23 the truck with him? Were you in like the driver's seat and he's
 24 in the passenger seat?
 25 A Yes.

1 A Yeah. Yes.
 2 Q -- up and spoke with Mr. Herrera?
 3 A Yes.
 4 Q And when he said -- or if you needed to call somebody,
 5 do you have any sense of -- were you able to hear that
 6 conversation?
 7 A I only heard Scott's part of it. Because I was up on
 8 the machines, and he -- he was kind of stern when he asked.
 9 Because I don't know what Guillermo was doing. I don't -- I
 10 didn't hear none of that so...
 11 Q Okay. And when Scott -- did Scott Nicholson come up to
 12 the window -- the door of the car -- of the cab -- of the
 13 truck?
 14 A He opened the door of the truck, yes.
 15 Q All right. And what did he ask Mr. Herrera?
 16 A Just if he was going to come back to work or if he
 17 needed to call somebody to take his place.
 18 Q Okay. And did he say anything about if he didn't get
 19 back to work what would happen?
 20 A I -- I'm not 100 percent, but I think he said that he
 21 wasn't going to get paid that day. So, that's kind of one of
 22 those I can and cannot remember. You know, some of that I can
 23 remember. I can remember when he said if he needed to -- was
 24 going to get back to work or if he was going to call some -- call
 25 somebody to replace him so he could work. Because he said it in

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1 Q What kind of truck is this?
 2 A It's a -- just a single cab F350.
 3 Q And while you're sitting there, the air conditioner is
 4 running?
 5 A Yes.
 6 Q Did you talk with Mr. Herrera or were you able to make
 7 any observations about how he was doing at that time?
 8 A When I got in, he's like, oh, I'll get out. And I
 9 said, no, no, just stay as long as you want. I said, I'm just
 10 getting in to cool off, take a couple drinks so I can get back --
 11 get back to work.
 12 Q All right. Did he think you were going to be moving
 13 the truck or did he --
 14 A I don't know what he was thinking. I just -- he was --
 15 said something about getting out, and I said, no, don't worry
 16 about it.
 17 Q What happened next?
 18 A I got out and went back to work. Climbed back up on
 19 the machine I was working on. And I would say probably half hour
 20 later he -- Scott come up because the -- the gang actually caught
 21 up to where my location was. They were farther back. And they
 22 caught up to where my location was. Scott come over and asked
 23 him if he was going to go -- going to go to work or if he needed
 24 to call somebody.
 25 Q All right. And that's Scott Nicholson that came --

1 kind of a stern voice.
 2 Q Mr. Nicholson?
 3 A Mr. Nicholson, yes.
 4 Q Okay. And what -- what -- what sense do you have about
 5 the stern voice or why it was a stern voice? Or what sense did
 6 you get from that?
 7 MR. SCHMITT: Foundation, form. Go
 8 ahead.
 9 A Okay. I think he was a little frustrated because it
 10 was so hot. And the gang basically left. I mean, they just kind
 11 of pulled away. And the quality was junk, so basically they had
 12 to fix almost every tie. They had to do a lot of manual labor.
 13 The machines can't do like welds that are on ties. They have to
 14 dig out between the ties and manually move the -- move the ties
 15 with jacks and stuff, and it just -- in that kind of heat, it
 16 doesn't take much to get people a little upset.
 17 Q (By Mr. Cox) Okay. Did you have a sense as to whether
 18 or not or do you have any knowledge as to whether or not
 19 Mr. Nicholson's quality control or clean-up gang, as it's called,
 20 was undermanned that day?
 21 A It's kind of always undermanned. It's the last thing.
 22 And what happens is they get all the machines going through. And
 23 then at the end of the day they try to take the people at the
 24 front, when they're done, and send them back and kind of help
 25 out.

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1 Q Okay. When they're through working with their
2 machines?

3 A Right.

4 Q Or whatever that's --

5 A Yeah, they go so far and then they shut the machines
6 down and...

7 Q After the conversation that Mr. -- that you heard
8 Mr. Nicholson have with Mr. Herrera, what happened next?

9 A Guillermo got out of the truck and walked over and got
10 on a P car, which is a machine that clips and reclaims the rail,
11 and they started working.

12 Q How -- how did Mr. Herrera look to you when he left
13 your truck?

14 A A little slow, not -- you know. You know, just kind
15 of, I guess, lethargic type. I mean, it's kind of hard to
16 explain. You could just tell, you know, he didn't -- he didn't
17 have all the pep in his step that he -- that most people do, you
18 know, according -- you know, you see Scott walking and you see
19 somebody working, you see -- you know, not quick steps or
20 anything like that.

21 Q Okay. What did you observe -- oh, by the way, was
22 there any other cooling station around? That could be clean-up
23 crew or quality control gang.

24 A No. There was no -- they call them cooling stations or
25 tents with like ice and fans, and there was none to be seen.

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1 Q Okay. What happened next? What do you remember next
2 about Mr. Herrera?

3 A The next thing I remember about that is I'm up working
4 on the machine and I hear him called. They need a -- a truck to
5 come pick somebody up. So, I jumped down because I knew who he
6 was calling. It was Scott calling on the radio, saying they
7 needed some -- to come pick somebody up. And so I jumped -- was
8 getting off the top of machine, trying to get down and get my
9 stuff cleaned off the truck so I could go assist if they needed
10 somebody. And then I remember Bobby Herrera, he come by. You
11 know, not screaming by, but, you know, you could tell he was in a
12 hurry. And he come by me and he went down the right-of-way. And
13 I still got my stuff cleaned up in case they needed help. And
14 then I saw down there, about three quarters of a mile or so, you
15 could see where he turned around. And then like five, ten
16 minutes later he come back by me, and I saw Herrera and Guillermo
17 in the front.

18 Q Okay. Were you able to observe anything about
19 Guillermo Herrera as he drove by? Anything about his condition
20 or anything like that?

21 A No. It's -- I mean, I just looked to see -- when they
22 come down, I looked and I saw both of them. And I was finishing
23 up my work so I could get out of the heat myself.

24 Q What -- when you heard this -- that radio transmission
25 from Scott Nicholson that he needed some help, what was the tenor

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1 of the conversation? Was it like he needed somebody right away?
2 Was there an emergency? What -- what sense did you get from
3 that?

4 A It was urgent. You know, it wasn't like life or death
5 or anything, but you could just tell -- he says, I need somebody
6 here now to -- to -- with the car and pickup. Somebody. So...

7 Q Did he say anything about pick him up and take him
8 where or just pick him up?

9 A Come -- come pick him up. He didn't say, take him to
10 the hospital or anything. He just said, come pick him up.

11 Q Was there any kind of debriefing or safety standdown
12 after Mr. Herrera's injury, after he was taken off the job that
13 day? Either a job -- or a safety briefing that day or the next
14 day? Can you recall?

15 A I don't remember if there was or not.

16 Q Anything else that you can remember occurring as it
17 relates to Guillermo Herrera on the -- July 26th?

18 A No, not really. I mean, that's just -- that was --
19 that was it. I can remember...

20 Q Okay.

21 A ...it was just another day. If I, you know, would have
22 known all this was going to happen, I probably would have wrote
23 some notes or something. But, you know, you just think it's
24 another day on the railroad.

25 MR. COX: Okay. Thanks very much. I

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1 appreciate your time today. Thanks so much.

2 CROSS-EXAMINATION

3 BY MR. SCHMITT:

4 Q Mr. Bradley, a few follow-up questions just to fill in
5 some of the -- the details. You had indicated that -- so, you're
6 working on the track. You're at this area where the -- the
7 quality control gang is or the clean-up crew. And so you're
8 actually working on a -- what are you doing there yourself?

9 A I'm fixing an air conditioner on a speed swing.

10 Q All right. So, that's another piece of equipment that
11 was -- what was it? Set off to the side to --

12 A Yeah. It's -- it's actually a rubber-tired tractor
13 that has high rails on it that can -- but they set it off because
14 the A.C. wasn't working.

15 Q All right. And so your job was to then fix -- fix that
16 piece of equipment?

17 A Right.

18 Q All right. And so you're not actually assigned to this
19 quality control gang that Mr. Herrera --

20 A No.

21 Q -- and Scott Nicholson are on?

22 A No. Between me and the six other guys, usually we're
23 going up and down, you know. We'll -- one guy will move up
24 towards the front. And then as the gang goes by, then you just
25 kind of fall back and then they just keep moving forward. It was

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1 kind of usually how we do it. And then that day I was assigned
2 to go put an A.C. compressor in a dryer and stuff on this speed
3 swing because the A.C. wasn't working.

4 Q And you said there's approximately 20 machines and six
5 mechanics on the gang?

6 A Yes.

7 Q So, do most of these machines have air conditioning in
8 them?

9 A I'd say about half.

10 Q Okay. Are there also -- you said that you were working
11 and you have a pickup truck?

12 A Yes.

13 Q An F350 truck at your location where you're working?

14 A Yes.

15 Q And you said you were leaving it running with the --

16 A Yeah.

17 Q -- A.C.?

18 A Yes.

19 Q Why is that?

20 A My boss says when it gets hot like that, if it has
21 A.C., then we need to leave it running in case -- it's like a
22 cooling station. And then also if we start -- the mechanics
23 start getting overheated, we need a place to go. So that way
24 we -- we have a place to go where it's cool, where we don't have
25 to start it and, you know, get in the car that's 150 degrees and

1 as -- for purposes of cooling stations if somebody wants to get
2 in and cool down?

3 A Yes.

4 Q All right. So, how many trucks total -- how many
5 vehicles total are there on this gang?

6 A Well, the six trucks. Then Bobby usually -- he's
7 usually running around somewhere. So, I'd say seven or eight.

8 Q All right. And are all of them -- is one no longer
9 than a few minutes away at the most?

10 A Usually, yes.

11 Q Okay. And in this occasion or on this day, Scott
12 Nicholson came up to you and asked you if Mr. Herrera could get
13 in -- into your truck?

14 A Yes.

15 Q All right. And -- and, of course, you said that was
16 fine?

17 A Uh-huh. Yes.

18 Q Okay. And you recall that overall Mr. Herrera --
19 Guillermo Herrera was in there about 45, 50 minutes total?

20 A Yeah.

21 Q All right. And there's water and -- in -- in your
22 truck too?

23 A Yes.

24 Q Okay. And you said at one point during this 45 to 50
25 minutes you actually get in the truck yourself?

Page 19

Page 21

1 then wait for it to cool down.

2 Q So, this truck functions as a cooling station?

3 A Yes.

4 Q And how many of these trucks are throughout the gang?

5 A Every mechanic has a truck.

6 Q Okay. So -- and you said there's six mechanics?

7 A Yes.

8 Q Are there other trucks out there too?

9 A They are, but there were none around it that day. They
10 were -- the -- the main gang has already moved on.

11 Q Further ahead?

12 A Further ahead, yeah.

13 Q But can those trucks be moved to a different location
14 if need be?

15 A Yes. They move wherever -- they usually go where
16 there's a mechanical problem, is usually where they end up
17 sitting.

18 Q All right. I mean, we know from your testimony -- you
19 indicated that a radio was used. And within minutes Bobby
20 Herrera drove by in his truck?

21 A Uh-huh.

22 Q Right?

23 A Yeah. He's got a company van.

24 Q Okay. So, I'm just trying to get some sense. All --
25 are all of these vehicles that are out there, they all are used

1 A Yes. About 15 minutes after he did because it was -- I
2 tried about every hour or every 30 minutes, try to go spend a
3 little time in -- in there to cool off because it is nasty hot
4 out.

5 Q Sure. And so what happened this day, is that typical
6 that all of these vehicles are -- are around? That if anybody
7 wants to get into a vehicle to cool down, that's how you guys
8 work out there on -- on this gang?

9 A Yes.

10 Q All right. And so Mr. Herrera sitting in your truck on
11 this day, that was something that was consistent with, you know,
12 established practice and procedure?

13 A Yes.

14 Q Okay. So, when you got into the truck -- you said that
15 you climbed into the truck. And what was your purpose? Just to
16 cool down yourself?

17 A To cool down and drink some water, yes.

18 Q And I'm reading my notes. You said that Mr. Herrera
19 said to you, oh, hey, I can -- I can get out?

20 A Yeah.

21 Q Or something to that effect?

22 A Yeah, because he was sitting there and I -- he's like,
23 oh, I can get out. He's like -- I said, no, you can sit in here
24 as long as you want. It's -- you know, it's what it's here
25 for.

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1 Q Here's my question: When you're talking with Guillermo
2 Herrera -- so, he volunteers this statement to get out. Was he
3 communicating with you normally?

4 A Yeah. He was -- seemed to be, yeah. I mean, I don't
5 remember much conversation after that. I mean...

6 Q Was there anything that gave you a concern that
7 Mr. Herrera -- Guillermo Herrera needed to go to the hospital or
8 needed medical attention at this time?

9 A No.

10 Q All right. And your response to him was, no, that's
11 fine. Go ahead and -- and stay in here?

12 A Uh-huh.

13 Q Yes?

14 A Yup. I think I said, truck's going to run all day. It
15 doesn't matter. If you're going to be in here or not, it doesn't
16 matter.

17 Q Okay. And you said that the -- the -- the quality
18 control gang, of course they're toward the end of the -- end of
19 the line, so to speak, right?

20 A Yes.

21 Q Okay. And there was -- it looked as though that they
22 were doing, you know, work because whatever was going on in front
23 of them, that clips weren't correct or missing or something and
24 they -- so this quality gang had to be doing some work?

25 A Yes.

Page 23

Page 25

1 Q Okay. And in -- and did you state something to the
2 effect that -- that you felt that Scott Nicholson, when he came
3 up, was a little frustrated, and your impression was it was
4 because of the work that needed to be done or what this quality
5 gang was -- was facing?

6 A Yes.

7 Q Okay. Now, when Scott Nicholson comes up to the truck,
8 you said your -- where are you actually at this time?

9 A I'm on top of the machine. It's -- the pickup sits --
10 it's like an L shape. The pickup -- the back of the pickup's
11 towards the back of the machine. So, my tools are sitting on the
12 back of the pickup so when I climb down off the machine there's
13 my tools. And so I'm about -- like, I don't know, a car length
14 away, I guess.

15 Q And the -- I'm trying to get a sense. So, the way that
16 this truck is positioned -- so, if there's a driver's side and a
17 passenger's side, which door does Scott Nicholson open up?

18 A The passenger's side, which is the farthest away from
19 me.

20 Q So that side of the truck is away from you?

21 A Right.

22 Q Okay. And are there machines and equipment that are
23 operating also right in this area?

24 A Some of them, but they're not real close. But they're
25 far away. You can hear them, but not real loud.

1 Q All right. You said Mr. Nicholson then was outside the
2 truck talking to Mr. Herrera, who's inside the truck?

3 A Uh-huh. Yes.

4 Q And, from the distance, you couldn't hear anything that
5 Mr. Herrera said?

6 A No.

7 Q Okay. And what you do remember Scott Nicholson saying
8 was to the effect that -- that are you going to go back to work
9 or do I need to call someone to replace you?

10 A Correct.

11 Q All right. And -- and those -- you can recall with
12 certainty that that -- that that was said?

13 A Yes, because it struck me a little odd because -- I
14 mean, you get to know people. And Scott was kind of stern or
15 frustrated. You could tell that he was, you know, upset, and he
16 was just trying to -- you know, he's -- he's trying to do his
17 job. And, you know, one -- one guy down, you know, throws a
18 wrench in the whole thing. Because, I mean, you all have little
19 specific jobs and -- and I -- he's just trying to make sure
20 that -- as far as I know is because it just makes it harder on
21 everybody if one person's missing.

22 Q Sure. And if somebody needs attention or assistance or
23 can't work, is the -- is the procedure then that someone will be
24 called to then replace them?

25 A Yes.

1 Q So, is it -- is it -- is that your understanding or
2 impression, at least, of what Mr. Nicholson is doing is trying to
3 figure out, does Guillermo Herrera, does he want to come back to
4 work or does he not want to come back to work so Mr. Nicholson
5 can figure out, do I need to call someone else to replace him?

6 A Yes.

7 Q Is that fair?

8 A Yeah, that's fair.

9 Q Okay. Do you have any reason to believe -- well,
10 strike that. Did you know Mr. Nicholson or had you encountered
11 him before this day?

12 A Yeah. I've talked to him. I mean, it's kind of odd.
13 You know, the railroad's kind of a small family. When you get
14 out there, you start to know people and how they act. And, you
15 know, some people you're more friends with than other people
16 and...

17 Q Sure. At least based on your interaction with
18 Mr. Nicholson in the past and your impression of him, did you
19 have any reason to believe that if Guillermo Herrera wanted
20 medical attention or didn't want to go back to work that
21 Mr. Nicholson wouldn't have complied with that request?

22 A No. He would have complied with it and called up
23 his -- his supervisor to try to get somebody back there to run
24 the machine so they could keep moving.

25 Q All right. And then Mr. Herrera, he gets out of the

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1 truck. At that point was there anything, at least from your
2 observations of Mr. Herrera at that time, that indicated to you
3 that Mr. Herrera needed medical attention or needed to go to a
4 hospital? From what you could see.

5 A No. I just -- he was just kind of moving slow. But we
6 were all kind of moving slow. I mean, the heat kind of sucks all
7 the horsepower out of you, I guess, so...

8 Q Sure. Fair to say you were probably moving a little
9 slow that --

10 A Yeah.

11 Q -- day too?

12 A Yeah, there was times where I just -- I'd sit there and
13 I'd say, oh, you know what, I'm going to go sit in the truck for
14 ten more minutes rather than go work. And then after ten more
15 minutes, I get out and go -- start working again.

16 Q And so Mr. Herrera -- Guillermo Herrera gets out of
17 your truck and then you said he goes to the P car --

18 A Yes.

19 Q -- machine? And then you see him work on that -- or
20 he's then operating that machine at that point?

21 A Yes. He gets in it and starts operating it and starts
22 moving down the track with it.

23 Q All right. And so where you're working on the speed
24 swing, is the gang -- the control gang, are they then -- at this
25 point they're then working down the line further and away from

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1 you?

2 A Yes. They're pretty much out of sight. I think you
3 might be able to see a couple little flashing lights, but they
4 were just way down there so you couldn't really see them.

5 Q So, Guillermo Herrera is working or operating this P
6 car down the track to the point that this gang actually moves so
7 far that they're then out of the sight of you?

8 A Yes.

9 Q Okay. Next thing you know is you hear on the radio,
10 hey, we need somebody here to pick somebody up?

11 A Yes.

12 Q All right. And you said Bobby Herrera came by in his
13 truck within minutes?

14 A Yes.

15 Q In a fast or -- I don't know. How fast was he?

16 A Yeah, he was -- he was going faster than usual. I
17 mean, you could tell. Because usually when you get around people
18 with -- with all the equipment and stuff, you slow way down and
19 go real slow around them so in case somebody jumps out or tries
20 to stop you, you don't -- you know, you don't hit them or run
21 them over or anything so... But he went -- he went by, you know,
22 faster than he normally goes by people.

23 Q All right. And so the response time again is within
24 minutes of -- of somebody using a radio and making a call?

25 A Yes.

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1 Q All right. And that would be an example where trucks
2 are positioned throughout this gang or if somebody uses a radio,
3 even though there might not be a cooling station truck right next
4 to you, if you need something, one's going to be there within
5 minutes?

6 A Usually, yes.

7 Q All right. And as far as you know, you then saw Mr.
8 Herrera then come by with Guillermo Herrera inside?

9 A Yes.

10 Q And is that the end of your involvement with -- with
11 this incident?

12 A Yeah, that's the last time I -- I saw Guillermo and...
13 And I thought it was all done. I -- I didn't know -- I didn't
14 know where they were going -- taking him, but I figured they're
15 getting him whatever help they need to get him.

16 MR. SCHMITT: All right. Okay. That's
17 all I have. Thank you very much.

18 REDIRECT EXAMINATION

19 BY MR. COX:

20 Q I want to go back to what Scott Nicholson said. What
21 you heard him say when he was standing at the -- the door of your
22 truck.

23 A Uh-huh.

24 Q He said -- he asked Guillermo if he was going to get
25 back to work. And then he said if he didn't get back to work, he

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1 wasn't going to get paid.

2 MR. SCHMITT: Object to the form,
3 foundation.

4 Q (By Mr. Cox) Is that what he said? The reason I'm
5 asking is, look at the --

6 A Yeah.

7 Q -- statement. I know that --

8 A Yeah, I'm -- I'm trying to think if -- you know, I'm
9 trying to think back to if that's what I heard but -- to
10 absolutely 100 percent.

11 Q Just to the best of your memory.

12 A Yeah.

13 Q That's all we're asking for.

14 A Yeah. Best of my memory, I -- I kind of remember that,
15 but I kind of don't. I can't 100 percent say that's exactly. I
16 do remember when he was at the truck he asked me if he was going
17 to go back to work or if he needed to call somebody. I can't
18 remember if he -- I can't remember if he absolutely said that 100
19 percent. I don't want to -- you know. I mean, I remember
20 something about that, but I don't remember...

21 Q Tell me what you remember about it.

22 A I remember there was some -- at one time I remember
23 hearing that, and I don't remember if -- if Scott said that or
24 when that was said. I don't remember exactly 100 percent when
25 he -- if he was standing at the truck he said that or not. I

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1 can't remember that.

2 Q Okay. Is it fair for me to say that your best memory
3 is at some point in time Scott Nicholson said if he didn't get
4 back to work he wasn't going to get paid?

5 MR. SCHMITT: Form.

6 A I -- I remember hearing it. I can't remember -- like I
7 said, I was up on the machine. I can't remember. I wasn't down
8 next to him, so I can't 100 percent say that. But I remember
9 hearing somebody say that, and I can't remember if it was -- you
10 know, when that was so...

11 Q (By Mr. Cox) And the only person present that would
12 have said that would have been Scott Nicholson?

13 A Yeah, that would have been the only person, like I
14 said, that could -- that might have said that or something. I
15 don't know. Like I said, I'm trying to remember. It's been a
16 year ago, so I'm trying to remember exactly what -- what was
17 said. I -- I remember hearing that. I just can't remember if --
18 if he stood there in the doorway and -- and said that or not 100
19 percent.

20 Q Is there some other time he would have said it?

21 A I don't know.

22 Q Okay. The trucks. Each mechanic has a truck?

23 A Yes.

24 Q And that mechanic will drive his truck with his tools
25 to a machine to repair that machine?

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1 A Yes.

2 Q The primary purpose of the truck is to provide
3 transportation for mechanics to and from the machines that they
4 have to work on?

5 A Yes.

6 Q And when the mechanic is working on a machine, his
7 truck is there with the tools in it, and he needs to go back and
8 forth to his truck to get the tools or parts or whatever he needs
9 to repair the machines?

10 A Yes.

11 Q If someone calls and needs a truck, it is the mechanic
12 who would have to leave his job on the -- repairing the machine,
13 climb in his truck and drive the truck somewhere if he had been
14 summoned to provide somebody cooling?

15 A Yes.

16 Q The result would be the mechanic is not able to work
17 and do the work on the machine that he's supposed to be doing?

18 A Yes.

19 Q And your memory is that at the time that Guillermo
20 Herrera is in your truck on July 26th, 2015, your truck is the
21 only truck around until Bobby Herrera shows up in his van?

22 A Yes.

23 MR. COX: Okay. Thank you, sir. That's

24 all I have. Thank you.

25 MR. SCHMITT: Nothing further.

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1 THE WITNESS: Okay.

2 MR. COX: You have -- we'll go off the
3 record.

4 Brad, you have the right to read and sign this
5 deposition, or you can waive reading and signing.
6 The reading and signing means that the court
7 reporter would mail you a copy at your home with a
8 change sheet, then you could make changes, mail it
9 back to her and she'd file it, or you can waive
10 reading and signing. It's completely your choice.

11 THE WITNESS: I'll read and sign it.

12 (Deposition concluded at 9:10 a.m.)

13 * * * * *

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1 C E R T I F I C A T E

2 STATE OF NEBRASKA)

) ss

3 COUNTY OF BUFFALO)

4 I, Doris Schuessler, General Notary Public in and for the
5 State of Nebraska and Registered Merit Reporter, do hereby
6 certify that the deponent was by me duly sworn or affirmed to
7 testify the truth, the whole truth and nothing but the truth, and
8 that the deposition as above set forth was reduced to writing by
9 me.

10 That the within and foregoing deposition was taken by me at
11 the time and place herein specified and in accordance with the
12 within stipulations: the reading and signing of the witness to
13 his deposition having not been waived.

14 That the foregoing deposition is a true and accurate
15 reflection of the proceedings taken in the above case.

16 That I am not counsel, attorney or relative of either party
17 or otherwise interested in the event of this suit.

18 IN WITNESS WHEREOF, I have affixed my signature and seal
19 this 9th day of October, 2016.

20 My commission expires September 30, 2018.

21 _____
22 Doris Schuessler
23 Registered Merit Reporter
24 General Notary Public
25

I, BRADEN BRADLEY, wish to make the following changes in the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
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BRADEN BRADLEY

GENERAL NOTARY PUBLIC

IN WITNESS WHEREOF, I hereunto affix my signature and seal
the _____ day of _____, 2016.
My Commission Expires: _____.